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SUPREME COURT OF THE UNITED STATES.

No. 1000.

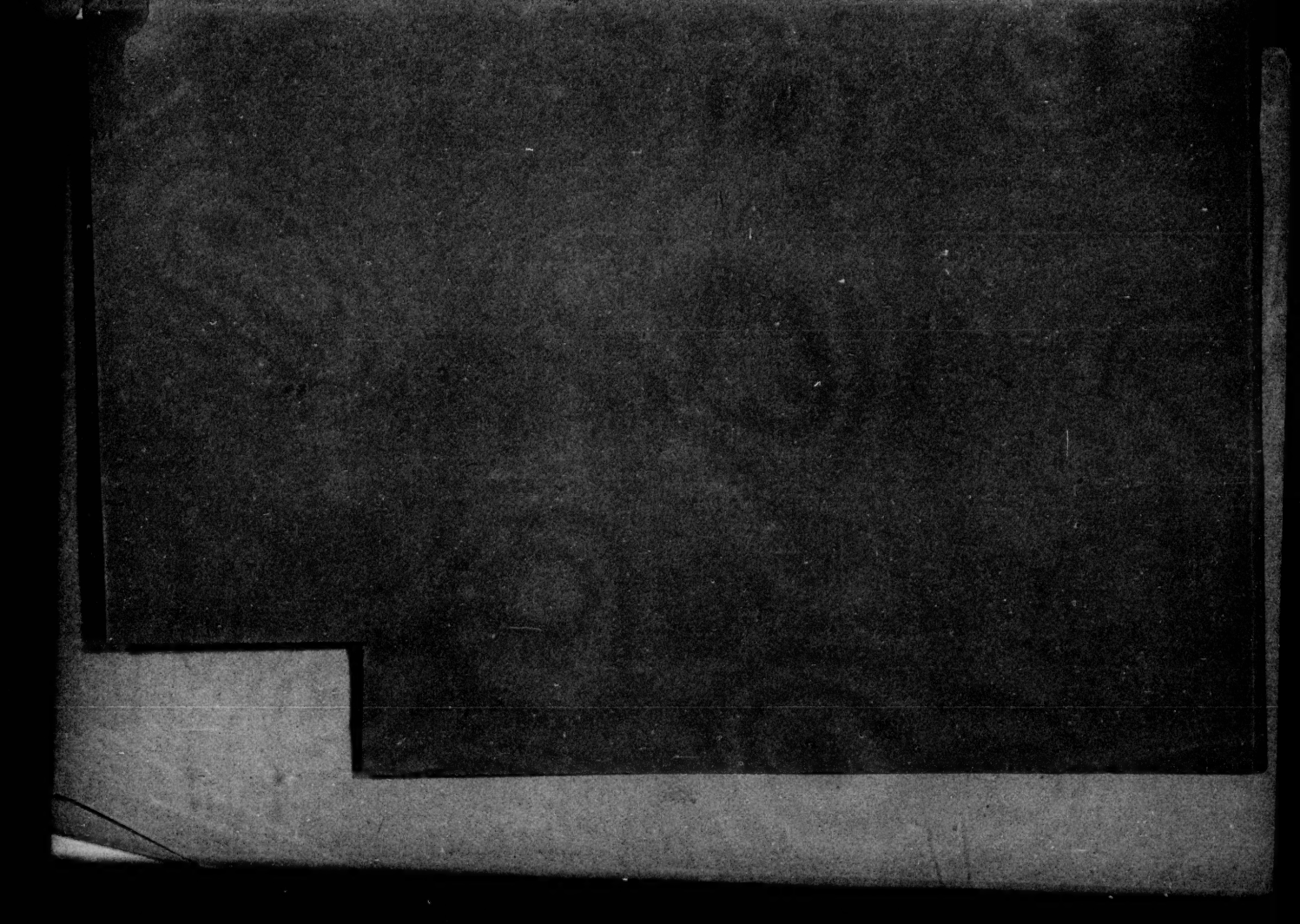
CHARLES GOODMAN, APPELLANT,

vs.

WILLIAM E. NIBLACK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED OCTOBER 15, 1880.



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1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court-house in the city of Indianapolis, in said district, on the first Tuesday of May, in the year of our Lord one thousand eight hundred and eighty, before the honorable John M. Harlan, associate justice of the Supreme Court of the United States and judge of said circuit court.

CHARLES GOODMAN
vs.
WILLIAM E. NIBLACK. } No. 6826. In chancery.

Be it remembered that heretofore, to wit, at the November term of the circuit court of the United States for the district of Indiana, on the 29th day of January, A. D. 1880, before the honorable Walter Q. Gresham, one of the judges of said court, the following proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by J. C. Denny, Riley, and Johnson, and Burns and Denny, his solicitors, and files his bill of complaint herein in the words following, to wit:

(Original bill omitted by order of complainant's solicitors, because of the filing of an amended bill.)

2 And afterwards, to wit, at the May term of said circuit court, on the 18th day of May, 1880, before the honorable John M. Harlan, associate justice of the Supreme Court of the United States and judge of said circuit court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by their respective solicitors, and the court having heard the argument upon the demurrer to the bill herein, and being sufficiently advised, doth now sustain said demurrer, and thereupon leave is given the complainant until the 7th day of June next to amend his said bill.

And afterwards, to wit, at the May term of said circuit court, in recess thereof, on the 4th day of June, 1880, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by J. C. Denny, his solicitor, and files amended bill herein in the words following, to wit:

3 To the honorable Thomas H. Drummond and Walter Q. Gresham, judges of said circuit court:

Your orator, Charles Goodman, a citizen of the city of Chicago, in the State of Illinois, for his amended bill of complaint herein, complains of the defendant, William E. Niblack, a citizen and resident of the State of Indiana, and says that heretofore, to wit, on the 20th day of January, in the year of our Lord 1855, your orator recovered a judgment against one Albert G. Sloo, in the supreme court of the State of New York for the county of New York, for the sum of thirty-one thousand three hundred and forty-four dollars and forty-four cents ($31,344.44), said court being a court of competent jurisdiction to render said judgment, and said judgment was rendered only after having duly acquired jurisdiction over the person of said Albert G. Sloo and the subject matter of said action.

Your orator further represents unto your honors that no part of said

judgment has ever been paid, or in any manner satisfied, except as to the sum of four hundred and fifty-two dollars and ninety-three cents ($452.93), paid thereon by sale of certain personal property on execution on the 22d day of December, 1859, and that said judgment remains in full force.

Your orator further represents unto your honors that heretofore, to wit, on the 20th day of April, in the year of our Lord 1847, the
4 said Albert G. Sloo made and entered into a contract with the Government of the United States, through the Secretary of the Navy, under and pursuant to an act of Congress approved March 3d, 1847, entitled "An act providing for the building and equipment of four naval steamships to carry the United States mails from New York to New Orleans twice a month and back, touching at Charleston (if practicable), Savannah, and Havana, and from Havana to Chagres and back twice a month." A copy of said contract, so made and entered into, is filed herewith, as a part of this bill, marked Exhibit No. 1.

And your orator further represents that heretofore, to wit, on the day of , 1847, the said Sloo sold, assigned, and transferred to Prosper M. Wetmore, George Law, Marshall O. Roberts, and Edwin Crosswell one-half interest in the said contract hereinbefore described, marked Exhibit No. 1, and thereafter the said Sloo had and owned only one-half interest in said contract, and the said Wetmore, Law, Roberts, and Crosswell had and owned the other one-half interest therein; that is to say, the said parties were to have and receive of the net earnings of the business to be conducted under said contract, one-half each.

And your orator further represents that heretofore, to wit, on the 17th day of August, in the year of our Lord 1847, the said Sloo, as party of the first part, Prosper M. Wetmore, George Law, Marshall O. Roberts
and Edwin Crosswell, parties of the second part, made and de-
5 livered to George Law, Marshall O. Roberts, and Bowes R. McIlvain, parties of the third part, a deed of trust, and then and thereby assigned and transferred to said Law, Roberts, and McIlvaine all the money that should at any time become due to said parties of the first and second parts, under the original contract made between the United States and the said Sloo, and all money that might at any time become due to said parties of the first and second parts, and all benefits and advantages thereunto belonging, and all sums of money which should be paid by the Government of the United States for the transportation of the mails, or for other service which might be required by the government; and all other sums which may become due or payable on account thereof. (A copy of said deed of trust is filed herewith as a part hereof, and is marked Exhibit No. 2.) That said deed further provided that in case of the death or resignation of said Law or Roberts, or if either of them should become incapable of performing the duties of the office of trustee, the said parties of the second part and their survivors, and the survivors of them, should appoint some suitable person or persons to fill the vacancy or vacancies thus occasioned. And that afterwards, to wit, before the 3d day of February, A. D. 1860, such proceedings were had that said Roberts and Dickerson became and were the sole surviving trustees under said deed of trust, and on said 3d day
of February, 1860, the said Roberts and Dickerson were the sole
6 and only persons who could or had any right or authority to collect any sum of money that was then, or at any time subsequent thereto, did or could become due to said parties of the first or second parts, for any service rendered by them in carrying the mails of the United States under said contract.

And your orator further represents unto your honors, that afterwards, to wit, on the 3d day of February, in the year of our Lord 1860, the said judgment defendant, Albert G. Sloo, executed his certain written deed of assignment in the State and county of New York, and in conformity to the laws of the State of New York, thereby granting, releasing, conveying, and confirming unto Benjamin H. Cheever, of the State of Rhode Island, and James Wiles, of said city of New York, all claims and demands, debts, dues, obligations, rights and choses in action, both at law and in equity, against any person or persons whatsoever, in trust for the payment, first, of all necessary and proper costs, charges and counsel fees and expenses which said trustees might incur in the preparation and execution of said instrument of assignment, and in the execution of the trust thereby created, together with all reasonable compensation to said trustees for their services in that behalf, and, second, for the payment of said judgment of your orator above mentioned. (A copy of said deed of assignment is filed herewith as a part hereof, and is marked Exhibit No. 3.)

7 And your orator further represents unto your honors that at the time of the execution of the said deed of assignment the said trustees Roberts and Dickerson, as such trustees, had in their hands under the deed of trust so as aforesaid made by the said Sloo and others to said Law, Roberts and McIlvaine a claim against the United States for a large sum of money, to wit, the sum of one million and thirty-one thousand dollars; that the said Sloo was entitled to one half of the amount thereof that should remain after the execution of the said trust and the payment of the debts and obligations contracted by the said trustees. That subsequently, to wit, on the 14th day of July, 1870, the Congress of the United States passed an act, which was approved by the President of the United States, entitled "An act for the relief of the trustees of Albert G. Sloo," by the terms of which the entire question was submitted to the court of claims for investigation. That, as a result thereof, there was finally allowed to said Marshall O. Roberts and E. N. Dickerson, as trustees of said Albert G. Sloo, the sum of $1,031,000.00 on account of the claim of said trustees against the Government of the United States, for carrying its mails under said contract, and for extra services rendered under the orders and directions of the Postmaster-General of the United States, which said sum of money was afterwards to wit, on the day of , 1877, paid by the said Govern-

8 ment of the United States to the said Marshall O. Roberts and E. N. Dickerson as trustees of said claim, pursuant to an act of Congress of , 1877, entitled "An act to provide for deficiencies in the appropriations for the services to the government, &c.," found on page 7 of the acts of the 2nd session of the 45th Congress, said act appropriating the sum of $633,078.48 to pay the judgment of said court of claims, theretofore rendered in favor of said trustees. That after the execution of said trust and the payment of all the debts and liabilities thereof there remained a large sum of money in the hands of said trustees, to wit, the sum of $182,000.00, that was due to and should have been paid to said Wiles and Cheever, as such assignees, for the use and benefit of your complainant.

Your orator further represents unto your honors that after the execution of said deed of assignment, and before the allowance of said claim against the Government of the United States, as aforesaid, the said Albert G. Sloo departed this life; that after the receipt of said money, the said Roberts and Dickerson, instead of paying the part thereof belonging to the estate of said Sloo, deceased, to said Cheever and

Wiles, the trustees named in the said deed of assignment, paid the same, that is to say, the amount that remained after the payment of the debts properly chargeable to the trust created by the said deed dated August 17, 1847, to the defendant William E.
9 Niblack, who was then and there acting as administrator de bonis non of the estate of the said Albert G. Sloo, deceased, except the sum of $31,000.00, which was and still is retained by the said Roberts and Dickerson, to wit, the sum of $150,000.00. That said sum of $150,000 00 was paid to said Niblack on or about the day , in the year 1877, under and pursuant to a contract, understanding and agreement made by said Niblack, Roberts, Dickerson, Cheever, and Wiles, the particulars of which contract, understanding and agreement your orator cannot give in detail, but he says that the sum of $37,000.00 was paid to said Wiles in his own right and for his own use and a large sum to said Cheever, the precise amount of which he cannot state. That the said sums of money were paid to said parties for the purpose of procuring them the said Wiles and Cheever to release and relinquish their right to receive the said money as such trustees under said deed of assignment, and in fraud of complainant's rights, for the purpose of cheating and defrauding your orator.

Your orator further represents that all debts and claims of every kind and description whatsoever which existed against the said Albert G. Sloo at the time of the execution of said deed of assignment and at any and all times since have been fully paid and satisfied, except the amount due to your orator.

10 Your orator further avers that all the necessary costs, charges, expenses and counsel fees incurred by said Wiles and Cheever, or either of them, in connection with the execution of said trust, together with full compensation for their services in that behalf, have been fully paid and satisfied, or if not so paid and satisfied, that there are funds sufficient in the hands of said Wiles and Cheever derived from the property and choses in action so assigned to them to fully pay and satisfy the same.

Your orator further represents unto your honors that the said Albert G. Sloo frequently in his life time, and during the pendency of said claim against the government before the Congress thereof, orally declared that a sufficient part thereof, when realized by his said trustees, should be applied by them to pay your orator's said judgment, and directed his said trustees, Cheever and Wiles, Roberts and Dickerson, to so apply the same.

And your orator further represents unto your honors that he has notified the said defendant that he is entitled by virtue of said deed of assignment to so much of said money as is necessary to satisfy and pay off his said judgment and interest, which now amounts to the sum of ninety thousand dollars, and he has demanded of said defendant that he apply so much of said sum of one hundred and fifty thousand
11 dollars as is necessary to said judgment, together with the accrued interest thereon, to the payment thereof. That before the said defendant received said money he had full notice of the existence of the said deed of assignment, so as aforesaid made by said Sloo to said Cheever and Wiles, and then and there had full notice and knowledge that the judgment in favor of your orator against said Sloo had not been paid; yet, nevertheless, the said defendant denies that he holds said money in trust for the use of your orator, and denies that he is entitled to any part thereof, although, at the time of said demand, the

same was in his hands, and he has hitherto refused and still refuses to pay the same or any part thereof to your orator.

Your orator further represents that the said William E. Niblack is now the duly qualified and acting administrator de bonis non of the estate of said Albert G. Sloo, deceased, and to the end that he may protect the interests of said estate herein, if any it has or claims, he is also made a party defendant to this bill in his representative capacity.

Your orator further represents unto your honors that the said Benjamin H. Cheever and James Wiles at once, to wit, on said 3d day of February, 1860, accepted said trust reposed in them by said deed of assignment, and have in part discharged the duties thereof; but he
12 says that they nor either of them ever paid any part of the said judgment, and that the said judgment and the interest thereon remains due and unpaid.

Your orator further represents that neither the said Benjamin H. Cheever, James Wiles, Marshall O. Roberts nor Edwin N. Dickerson reside in the State of Indiana, nor are they or any of them at present, nor were they at the time of the commencement of this suit, within the jurisdiction of this honorable court so as to be reached by its process.

Your orator prays that the defendant, the said William E. Niblack, may be required on his corporal oath, and to the best of his knowledge, information and belief, to make full, true and perfect answers to the following questions, and to all the material allegations of this bill:

1st. Whether this complainant did not, on the 20th day of January, in the year 1855, recover a judgment in the supreme court of the State of New York for the county of New York, for the sum of thirty-one thousand and three hundred and forty-four dollars and forty-four cents against the said Albert G. Sloo?

2nd. Whether the said judgment is not now and has ever since remained in full force and unpaid, except as to the sum of $453\frac{93}{100}$ realized thereon by sale of property on execution of date December 22d, 1859?

3d. Whether said judgment has not since its rendition borne interest at the rate of seven per centum per annum?

13 4th. Whether the said Albert G. Sloo*d* did not on the 3d day of February, in the year 1860, execute to Benjamin H. Cheever and James Wiles, in the city, county, and State of New York, his certain deed of assignment releasing and confirming unto them all claims & demands, debts, dues, obligations, rights, and choses in action, both at law and in equity, against any person or persons whatsoever in trust for the payment, first, of all costs, expenses, and compensation to said trustees for their services in execution of said trust, and, second, to the payment of complainant's said judgment above mentioned. And whether they did not accept said trust and enter upon the discharge of the duties thereof?

5th. Whether or not you saw the original deed of assignment by said Albert G. Sloo, or knew of its existence and contents before you received any part of the money appropriated by act of Congress of 1877 to pay the claims allowed by the Court of Claims in favor of Roberts and Dickerson, trustees of said Sloo, and whether you did not know before you received said money that the judgment in favor of said complainant described in said deed was then unpaid and in full force?

6th. Whether or not a sufficient sum of money or property has not been received by said Cheever and Wiles to fully compensate them for all the services rendered by them as such assignees and to fully pay them for all expenses incurred by them in the execution thereof?

7th. Whether all claims of which you have any knowledge against

the said Albert G. Sloo existing at the date of the execution of
14 said assignment, as well as all others afterwards created, have not been fully satisfied, adjusted, and released.

8th. Whether at the time of the execution of said deed of assignment the said Albert G. Sloo did have in the hands of certain trustees a claim against the United States for extra services rendered by him and his associates in carrying the mails of said government, which was then being prosecuted against the United States? Whether the said claim was not finally allowed by the Court of Claims and paid by the Treasury Department to said Roberts & Dickerson, or their order. State how much was thus paid, and to whom paid, if you know.

9th. Whether or not of the said sum of money so allowed by Congress and paid by the Treasury Department you did not receive the sum of one hundred & fifty thousand dollars; if not, what sum?

10th. Whether the complainant or his attorneys has given you notice since the said money was so received by you that he claimed that his said judgment should be paid out of the money in your hands received by you from said Roberts & Dickerson, or on their order, together with the interest on said judgment by virtue of said deed of assignment and the trust thereby created, and request you to pay said claim?

11th. Whether you did not upon such notice being given and demand made refuse to pay the same or any part thereof?

And your orator prays that the said defendant may set forth
15 an account of all and every sum of money received by him belonging to the estate of said Albert G. Sloo, from whom and under what circumstances he received the same, the dates when the claim or claims, contract, right, or equity accrued to said Albert G. Sloo by virtue of which the said moneys were realized, and from what, in particular, all and every such sums were respectively received, and that your orator may have such relief as the nature of this case may require. And your orator will ever pray.

J. C. DENNY,
RILEY & JOHNSON,
BURNS & DENNY,
Solicitors for Complainants.

EXHIBIT No. 1.

This agreement made at the city of Washington, in the District of Columbia, this twentieth day of April, anno Domini eighteen hundred and forty seven, between the United States of America, by the Secretary of the Navy thereof, and Albert G. Sloo, of the city of Cincinnati, in the State of Ohio, witnesseth:

That whereas, by the 4th section of an act of Congress approved March 3d, 1847, entitled "An act providing for the building and equipment of four naval steamships," it is made the duty of the said Secretary of the Navy, upon certain terms and conditions in said act enumerated, to contract on the part of the Government of the United States with the said A. G. Sloo for the transportation
16 of the U. S. mail from New York to New Orleans twice a month and back, touching at Charleston (if practicable), Savannah and Havanna; and from Havanna to Chagres and back twice a month. Now, therefore, the said A. G. Sloo does hereby agree with the United States, aforesaid, and firmly binds himself to establish a line of steam ships to consist of at least five vessels for the transportation of the U. S

mail from New York to New Orleans twice a month and back, touching at Charleston (if practicable), Savannah and Havana, and from Havana to Chagres and back twice a month, according to the terms and meaning of said act of Congress. The said steamships to be of not less than fifteen hundred tons burden and propelled by engines of not less than one thousand horse power each, to be constructed under the superintendence and direction of a naval constructor, in the employ of the Navy Department, and to be so constructed as to render them convertible at the least possible expense into war steamers of the first class. Provided, however, that the Secretary of the Navy may, at his discretion, permit one of said steamships to be constructed of not less than six hundred tons burden and engine in proportion.

And it is agreed by and between the parties aforesaid that two of the said steamships shall be completed and ready for service on or before the first day of October, A. D. 1848; shall be of the burden (1,500 tons) above described, and shall be propelled by engines of direct action
17 similar to the engine of the late U. S. steamer Missouri, and each of said ships shall be constructed of approved materials and fastenings, upon the dimension of the late steamship Missouri, as they are known and of record in the Navy Department of the United States, reserving to said contractor the right to add a saloon deck in said steamers, to add to their length not exceeding thirty feet, and breadth of beam not exceeding five feet, as may be necessary to give them the draft of water required by law for the service intended, and reserving to the contractor, also, the right to add two feet to the length of cylinder, above provided for, so as to make the same 70 inches in diameter & 12 feet stroke. But in making any or all of the alterations here permitted from the plan of the Missouri, aforesaid, the said contractor is not to disregard the general proportions of the steamships so to be constructed, but is to have reference to them, and to make the corresponding changes, in order to preserve them, which may be required for the purpose, by his said alterations, and said ships shall be sheathed with copper of approved quality; shall have ample and convenient capacity for the accommodation of men and stores of every description; shall be well and thoroughly fitted with not less than three masts, and the necessary spars, ropes, rigging, and canvas; shall be furnished and fitted with good and sufficient ground tackle, chain, and hempen cables,
18 anchors, and hawsers, with iron side wheels, with good and sufficient boilers, and coal bins for a supply of twenty days; and with all the fixtures and findings properly belonging to steamships of the dimensions and character above recited. The said boilers and machinery are to be of the best quality, and to be so placed below the water line as to be, as far as practicable, beyond the reach of cannon shot. And the said steamers in strength, capacity, rigging, spars, engines, boilers, and in all other respects whatsoever, are to be similar to the late U. S. ship Missouri, as far as the alterations above permitted, and a reasonable regard to the nature of the service contemplated will allow.

And it is further agreed by and between the parties aforesaid that should the Secretary of the Navy determine to employ a steamer of not less than six hundred tons burden for the service between Havana & Chagres, in lieu of one of said five steamers of fifteen hundred tons, as provided in the fourth section of the act of Congress hereinbefore referred to, then the said A. G. Sloo will construct said steamship of the same material, build and finish, with size, engine, & dimensions in proportion (having regard to tonnage) to the above-described ships, and fully

capable in all respects of performing the service and answering all the conditions required by said law.

19 And it is further agreed by and between the parties aforesaid that the said contractor, A. G. Sloo, shall complete and have in readiness for service the two remaining steamships provided in the act aforesaid on or before the first day of October, A. D. 1849, to be constructed and fitted in every respect of the burden, capacity, power, and description of the two steamships first hereinbefore described, with such improvements in model, engine, boilers, and finish as may be approved by the parties to this contract. And said line of steamships shall be kept up by alterations, repairs, or additions (of approved character) fully equal to the exigencies of the service, and the faithful accomplishment of the purposes recited in said act; shall perform the service required by said act according to its true intent and meaning; and shall be in full and entire operation on or before the first day of October, A. D. 1849.

And it is further agreed, by and between said parties, that each and all of said steamships shall be commanded by an officer of the Navy of the United States not below the grade of lieutenant, to be selected by the said contractor, A. G. Sloo, with the approval and consent of the Secretary of the Navy, and to be accommodated on board thereof in a manner becoming his rank and station, without charge to the government of the United States. And said A. G. Sloo further agrees to re-

20 ceive on board each of said steamships, and accommodate in a manner suitable to their rank, without charge to the Government of the United States, four passed midshipmen of the U. S. Navy, to serve as watch officers; and also to receive on board each ship, and suitably accommodate, without charge to the U. S. Government, an agent, to be appointed by the Postmaster-General, who shall have charge of the mails to be transported therein, safe and convenient apartments on board said ships being provided for said mails and agent by the said A. G. Sloo, contractor.

And the said United States of America, by the said Secretary of the Navy, in consideration of the premises, do hereby promise and agree to pay to the said A. G. Sloo, contractor, as a compensation for the service hereinbefore stipulated, the just and full sum of two hundred and ninety thousand dollars per annum, payable in quarterly payments, upon the full performance, by the said Sloo, of the service aforesaid, according to the meaning of said act of Congress and of this contract. And, inasmuch as the said steamships will be completed at different periods, respectively, within the time above limited, it is hereby understood and agreed by the parties aforesaid, that each of said ships shall commence the mail service required as soon as she shall be in all

21 respects ready therefor, according to the terms of this contract, and that a proportionate part of said compensation stipulated for the whole service aforesaid shall be paid to said A. G. Sloo for the partial service which may thus be rendered by the steamer or steamers which may, as aforesaid, be first completed; but no compensation shall, in any case, be paid for any period prior to the time when such steamship or steamships shall commence the actual performance of the service required by said act of Congress.

And it is further agreed by and between the parties aforesaid, that on tender of proper compensation, by the said Government of the United States, not exceeding a due proportion of the pay herein stipulated, the said A. G. Sloo, contractor, shall convey any mail or mails of the United States which he may be required to convey, in any steamship which he,

the said Sloo, may own, run, or control on the routes aforesaid, beyond the number of trips herein specified.

And it is further agreed by and between said parties, that this contract shall continue in force for the term of ten years, according to the true intent and meaning thereof—the said ten years to commence from the actual commencement of the service above specified. And
22 the said Secretary of the U. S. Navy, for the time being, shall, at all times, exercise control over said steamships, and shall, at any time, have the right to take them for the exclusive use and service of the United States, and to direct such changes in their machinery and internal arrangements as the said Secretary may require—the cost of such changes to be ascertained by the bills actually paid therefor; and the proper compensation of the value of the ships, when so taken as aforesaid, to be ascertained by appraisers to be mutually chosen by the parties aforesaid.

In testimony of all which agreements and stipulations, the parties above named have hereunto signed their names and affixed their seals this twentieth day of April, anno Domini one thousand eight hundred and forty-seven.

A. G. SLOO. [L. S.]
J. Y. MASON, [L. S.]
Sec'y of the Navy.

Signed, sealed, and delivered in presence of (as to the signature of Albert G. Sloo—the words "as principal and as his sureties," & the words "jointly and severally," first erased by black lines, & the word "themselves" altered to "himself" before signing)—

GEO. L. STORER.
To J. Y. M.,
JOHN APPLETON.

23 EXHIBIT No. 2.

This indenture, made this seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-seven, between Albert G. Sloo, of Cincinnati, in the State of Ohio, of the first part; Wetmore, Prosper M. Wetmore, George Law, and Marshall O. Roberts, of the city of New York, and Edwin Crosswell, of the city of Albany, of the second part, and the said George Law, Marshall O. Roberts, and Berres R. McIlvaine, of the city of New York, of the third part:

Whereas the Secretary of the Navy of the United States has made a contract with the said party of the first part for the transportation of the United States mails, in steamships, from New York to New Orleans and other places and back to New York, pursuant to an act of Congress entitled "An act providing for the building and equipping of four naval steamships," approved March 3rd, 1847, as by the said contract bearing date the 20th day of April, 1847, a copy whereof is hereto annexed, may more fully appear. And whereas, the said party of the first part hath applied to the said parties of the second part for aid to enable him to fulfill the terms and conditions of said contract, and the said parties of the second part have agreed to aid him, the said party of the first part, in the manner and on the terms and conditions hereinafter men-
24 tioned, upon his executing an assignment of the said contract to

the said parties of the third part, upon the trusts, and for the uses and purposes hereinafter expressed and declared;

And whereas, the said party of the first part hath accordingly by an instrument bearing even date herewith, and annexed to the said contract, assigned and transferred the said contract to the said parties of the third part upon trust as aforesaid:

Now, therefore, this indenture witnesseth: That the said parties of the second part, in consideration of the said assignment in the said instrument, and herein contained, and of the several covenants and agreements hereinafter contained, on the part of the said party of the first part, do hereby covenant, promise, and agree to and with the party of the first part, that they will build, construct, finish, and completely equip the steamships which in and by the contract aforesaid are contracted to be built by the said party of the first part, in such manner and at such times as are or may be required by the Navy Department of the United States, and provide for and pay all the moneys necessary therefor; such steamships and their machinery to be built, constructed, equipped, and repaired under the superintendence and direction and control of George Law, one of the parties of the second part, and that they will in all things well and truly fulfill and perform all the duties and services which in the said contract are agreed to be done and performed by the said party of the first part.

25 And this indenture further witnesseth that the said party of the first part, in consideration of the foregoing covenants and agreements by the said parties of the second part, and of one dollar to him in hand paid by the said party of the third part, the receipt whereof is hereby acknowledged, hath assigned, transferred, and set over, and by these presents doth assign, transfer, and set over, unto the said parties of the third part, and the survivors and survivor of them, their successors and assigns, the said contract so made and executed by the Secretary of the Navy, on behalf of the United States, with the said party of the first part, as hereinbefore mentioned, and all his right, title, and interest therein, and in and to the moneys to be had and received by virtue thereof, and all the privileges, emoluments, benefits, and advantages thereunto belonging, subject, however, to the duties, services, and obligations therein specified to be performed by the said party of the first part, to have and to hold, all and singular, the said premises unto the said parties of the third part, and the survivors and survivors of their successors and assigns; upon the trusts, nevertheless, and for the uses and purposes, and with the several powers and duties hereinafter expressed and declared.

And it is hereby mutually declared and agreed, by and between all the parties to these presents, that these presents, and the assignments of the said contract hereinbefore mentioned to have been executed by the said parties of the first part to the said parties of the third part

26 bearing even date herewith, and annexed to the said original contract, are and is upon the following trusts, and for the following uses and purposes, that is to say: Upon the trust that the said trustees shall cause the said steamships, as they shall from time to time be built, to be registered in their names, or in the names of the survivors or survivor of them, or their successors, and that they have the sole management and direction of the said ships, and each of them, and of their employment, subject, however, to the provisions of the said contract with the Secretary of the Navy; that they appoint and pay all such officers, agents and other persons as they may deem necessary or proper, either for the sailing or navigating of the said vessels, or for the man-

agement of the business thereof at the various ports or places at which they may trade or stop, on such terms, for such times, and with such powers and duties as to them may seem fit, except, however, that the said party of the first part shall have the privilege of nominating the commanders of the said ships, and by and with the consent of the said trustees of appointing the same; that they make all the necessary contracts and agreements for the employment of the said vessels, and exercise and perform all such other powers and duties in the premises as may be necessary or proper either for performing the duties and services required by the Secretary of the Navy, or for the profit and ad-
27 vantage of the parties interested; and upon the further trust that they collect and receive all the freights and earnings of the said vessels, and all sums which shall be paid by the Government of the United States for the transportation of the mail, or for any other service which may be required by government, and all other sums which may become due or payable on account thereof, and make all the disbursements of every kind incurred in the employment of the said vessels; and upon the further trust that the said trustees render to the said parties of the first and second part, respectively, quarter yearly, an account in writing of all their receipts and expenditures in the discharge of their trust, the first of such account to be rendered at the expiration of three months from the commencement of service by the said steamships or any of them, and that they apply the nett earnings which shall remain at the expiration of every quarter, after paying all the disbursements of the vessels and all the costs, charges and expenses of every kind, to which the said trustees may in any manner be subjected, or which are hereinafter declared to be a charge upon the joint funds in the first place to the payment of the sum of twelve thousand five hundred dollars quarterly, one-half thereof to the said party of the first part, and the other half to the said parties of the second part, and the residue of such
28 nett earnings to the repayment of all advances made by the said parties of the second part, rateably in proportion to the amounts advanced by them respectively in pursuance to the covenants in this indenture contained, together with legal interests thereon, and a commission of ten per cent. on all sums advanced for building, equipping and furnishing said vessels; and, lastly, upon trust that when all the moneys advanced by the said parties of the second part pursuant to this agreement with interest and commissions as herein above provided, and all expenses and responsibilities of every kind incurred by them or by the said trustees shall be lawfully satisfied and paid, that the trustees then divide the nett earnings of the said vessels, including the sums to be received from the Government of the United States, quarterly, into two equal parts, whereof one part shall be paid to the said party of the first part or his legal representatives and the other part to the said parties of the second part or their legal representatives, and that the said steamships or vessels shall be held by the said trustees in trust for the said party of the first part and his representatives, and the said parties of the second part and their representatives, in like manner in equal shares; and it is also further mutually agreed by and between all the parties hereto that the said Marshall O. Roberts and Edwin Cross-
29 well shall be joint agents in the city of New York for the transaction of the business of the said ships in the said city under the direction and control of the said trustees; that the said Marshall O. Roberts shall receive as compensation for his services as agent the sum of ten thousand dollars per annum, and the said Edwin Crosswell shall receive as a compensation for his services as agent the sum of five

thousand dollars per annum, such payments to be made quarterly, and to be paid out of the joint funds of the concern, and to commence with the commencement of service by any one of the said vessels.

It is also further mutually agreed that the said George Law shall receive as a compensation for his services in constructing, equipping, and repairing said steamships and their machinery the sum of five thousand dollars per annum, to commence as soon as the construction of said vessels shall be begun, and to be paid quarterly out of the joint funds of the concern.

It is also agreed that the said Borres R. McIlvaine shall receive as a compensation for his services as trustee the sum of five thousand dollars per annum, such sum to be paid quarterly out of the share of the profits of the said party of the first part, to commence with the commencement of service by any one of said vessels.

It is also further agreed by and between the parties of the first and second parts that Arnold Harris shall be agent of the said vessels at New Orleans, subject to the approval and control of the trustees.

And it is also further mutually agreed by and between all the
30 parties hereto, that in case the said George Law and Marshall O. Roberts, or either of them, shall die or resign, or become incapable of performing the duties of the office of trustee, the said parties of the second part, and the survivors and the survivor of them, shall appoint some suitable person or persons to fill the vacancy or vacancies thus occasioned, and thereupon the said contracts and the said ships and the trusts hereby created shall be transferred and assigned in such manner as to substitute the said new trustee or trustees in the place of the trustees whose office has become vacant as aforesaid, with the like effect as if he had been originally named and appointed by these presents; and in case the said Borres R. McIlvaine shall die or become incapable of acting, or shall resign, then the said party of the first part shall appoint some fit person to be trustee in his place, who shall thereupon in like manner be substituted in the place of the said Borres R. McIlvaine, with the like effect as if he had been originally named in these presents.

It is also agreed that in case the said Edwin Crosswell shall die or become incapable of acting, or shall resign, then the said party of the first part may appoint some other person as joint agent in the city of New York, in the place of the said Edwin Crosswell, such appointment to be subject to the approval of the said trustees, and that in case of the death, resignation, or inability to act of the said Marshall O. Roberts as agent, or the said George Law as naval constructor, then the
31 said parties of the second part shall appoint their successor or successors as the case may be.

It is also further agreed that at the expiration of the contract made with the Secretary of the Navy, as before mentioned, the said trustee shall *shall* sell and dispose of the said ships at public sale, giving at least sixty days' notice thereof in two of the public newspapers printed in the city of New York, and divide the nett profits thereof, after defraying all the expenses of the sale, and reimbursing themselves all sums which may be due to them, or for which they may be liable as trustees, or which they may be due to the said parties of the second part, between the several parties hereto, according to their several rights and interests therein, as hereinabove expressed; that is to say, one-half part to the said party of the first part or his representatives, and the other half part to the said parties of the second part, or their representatives.

And it is hereby further mutually agreed that the said trustees may

consent to any modification of the said contract which the Secretary of the Navy may require, and which, in the opinion of the said trustees, may be advantageous to the parties of the first and second parts.

And it is also further agreed that the said parties of the second part may associate any other person or persons as parties in interest with them, who shall thereupon become entitled to all the benefits of
32 the said contract, and of the trust hereby created, in the like manner as if they had been originally named as parties hereto.

And the said parties of the third part hereby accept the said trust and covenant, and agree severally and not jointly to and with the said parties of the first and second parts, respectively, well and truly to perform and fulfill all the duties and services herein above imposed and required; provided, however, and it is hereby expressly understood and agreed, that the said trustees shall not be liable for any more money than they shall actually receive under and by virtue of these presents, nor for the failure or misconduct of any officer or agent employed by them in good faith, nor for the loss, miscarriage or misapplication of any moneys received or transmitted by or to them or any person or persons employed in the management of the business of the trust, nor for any acts, defaults, misconduct of each other, but each for his own acts, defaults and misconduct only.

And it is hereby further mutually agreed that any modification, renewal or continuance of the said contract at any time obtained from Congress or the Naval Department, by either or any of the parties to these presents, shall enure to the joint and common benefit of the parties hereto respectively, their representatives or assigns, in the proportion of their respective interests as herein above set forth.

33 In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

A. G. SLOO.
GEORGE LAW.
MARSHALL O. ROBERTS.
EDWIN CROSSWELL.
PROSPER M. WETMORE,
By his attorney, ROBERT C. WETMORE.
B. R. McILVAINE.

Sealed and delivered in the presence of—
JOHN L. MASON.

CITY AND COUNTY OF NEW YORK:

On this seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-seven, before me personally appeared John L. Mason, to me known, who, being by me duly sworn, did depose and say that he resides in the city of New York; that he is acquainted with A. G. Sloo, George Law, Marshall O. Roberts, Edwin Crosswell, Robert C. Wetmore, attorney of Prosper M. Wetmore, and B. R. McIlvaine, and knowing them to be the same persons described in and who executed the within indenture; that they executed the same in his presence; that they acknowledged to him that they executed the same, and that he signed his name as a subscribing witness thereto.

BENJAMIN H. JARVIS,
Commissioner of Deeds.

34 EXHIBIT No. 3.

(Copy.)

This indenture, made this third day of February, 1860, between Albert G. Sloo, of Indiana, party of the first part, and Benjamin H. Cheever, of Rhode Island, and James Wiles, of New York City, parties of the second part:

Whereas the said party of the first part is justly indebted to various persons beyond his present ability to pay, and has property which he desires to have applied to the payment of such debts without delay:

Now, this indenture witnesseth that the said party of the first part, in consideration of the premises, doth hereby grant, bargain, sell, release, convey and confirm unto the said parties of the second part, all claims and demands, debts, dues, obligations, rights, & choses in action, whether in law or in equity, against any person or persons whatsoever, all the estate, property and effects of every kind and description, & wheresoever situate, of and belonging to the said party of the first part, and not exempt by law from execution, to have and to hold the same to the said parties of the second part, and their legal representatives forever—

In trust, nevertheless, & for the following uses, interests and purposes, namely: To take possession of the property hereinbefore conveyed, or so much thereof as is capable of manual possession, and convert
35 the same into money according to law, and to collect and reduce to money, so far as possible, all debts, dues, obligations, claims, demands, rights, & choses in action belonging to the party of the first part, and out of the proceeds thereof—

First. To pay all necessary and proper costs, charges, counsel fees & expenses which the parties of the second part may incur, pay, or be put to in the preparation and execution of this instrument, & in the execution of the trusts hereby created, together with a reasonable & proper compensation to themselves for their services.

Second. To pay and satisfy a certain judgment for about thirty-one thousand dollars, recovered by Charles Goodman against the said party of the first part in the supreme court of the State of New York, upon which judgment proceedings supplementary to execution are now pending against the party of the first part.

Third. To pay and satisfy a certain judgment recovered in the supreme court of the city of New York for about eleven hundred dollars, by Sam'l J. Glassey (upon which supplementary proceedings are now pending) against the party of the first part, provided said judgment is not set aside, and the lien of such supplementary proceedings vacated and discharged by the order or judgment of said court.

Fourth. To pay and satisfy a certain judgment recovered
36 against the party of the first part by William Paton and others in the supreme court of the State of New York, for about twelve hundred dollars, & upon which judgment supplementary proceedings are now pending against the party of the first part on behalf of one Cozens, who claims to be owner of said judgment.

Fifth. To pay any sum or sums justly due or owing to the party of the first part to the parties of the second, or either of them.

Sixth. To pay all other debts and liabilities of the party of the first part, in full, of the balance of such proceeds should be sufficient therefor, and if not, then to pay the same pro rata so far as such proceeds will pay the same.

And for the more effectual execution of the trusts hereby created, the party of the first part hereby constitute the parties of the second part his true and lawful attorneys for him and in his name otherwise to ask, demand, receive, sue for and recover, compromise, compound and settle all the claims, demands, and choses in action hereby transferred, with full power and authority to do every act and thing in the premises which the party of the first part might have done had these presents not been executed.

37 Witness the hand & seal of the said party of the first part at New York City the day and year first above written.

A. G. SLOO. [SEAL.]

In presence of—
THOS. G. WHITEHEAD.

And afterwards, to wit, at the May term of said circuit court on the 7th day of June, 1880, before the honorable Walter Q. Gresham, judge, as aforesaid, the following further proceedings in the above entitled cause were had, to wit:

Comes now the defendant, by Viehe and Evans, his solicitors, and files demurrer to amended bill herein, in the words following, to wit:

The demurrer of the defendant, William E. Niblack, to the amended bill of complaint of the plaintiff, Charles Goodman, against the defendant in chancery exhibited.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in manner and form as the same are therein set forth, doth demur thereto, and for causes of demurrer shows:

1. That the said complainant hath not in and by his said bill stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

38 2. That Benjamin H. Cheever and James Wiles, in said bill of complaint named, are by the complainant's own showing proper and necessary parties to any suit which may be brought against the defendant in this court, touching any of the pretended matters of equity charged in said bill.

Wherefore, and for divers other errors and imperfections, the defendant demands the judgment of this court whether he shall be compelled to make any other or further answer to the said bill, or any of the matters and things therein contained; and prays to be hence discharged with his reasonable costs in this behalf sustained.

VIEHE & EVANS,
Solicitors for Defendant.

We certify that, in our opinion, the above demurrer is well founded in point of law.

VIEHE & EVANS,
Of Counsel with Defendant.

DISTRICT OF INDIANA,
Knox County, ss:

Personally appeared before me, a United States commissioner within and for said district, William E. Niblack, and being by me duly sworn, on his oath says that the above demurrer is not interposed for delay.

WILLIAM E. NIBLACK.

Subscribed and sworn to before me this fifth day of June, 1880. Witness my hand and seal.

CHAS. G. McCORD,
U. S. Com'r, Dist. of Ind.

39 And afterwards, to wit, at the May term of the said circuit court, on the 18th day of June, 1880, before the honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

The following order in the above-entitled cause was this day received from honorable John M. Harlan, associate justice of the Supreme Court of the United States:

This cause, coming on for hearing on the complainant's amended bill of complaint and the defendants demurrer thereto, the counsel for the parties were heard, and the court being now fully advised, sustains said demurrer. It is therefore adjudged, ordered, and decreed by the court that the complainant's said bill of complaint be, and the same is hereby, dismissed, and that the complainant pay to the defendant his costs of this suit, to be taxed by the clerk of this court, to which the complainant now excepts.

And the complainant prays an appeal to the Supreme Court of the United States, which is granted on his filing a bond conditioned according to law in the penal sum of $1,000.

And afterwards, to wit, at the May term of said court, on the 24th day of July, 1880, before the honorable Walter Q. Gresham, judge as aforesaid, the following further proceednigs in the above-entitled cause were had, to wit:

40 Comes now the complainant and files his appeal bond herein in the sum of one thousand dollars, with Charles Goodman, Wm. A. Goodman, and Job M. Nash as sureties thereon, which bond is now by the court approved. And said appeal bond is in the words following, to wit:

Supreme Court of the United States. In chancery.

CHARLES GOODMAN
vs.
WILLIAM E. NIBLACK.

Know all men by these presents that we, Charles Goodman, William A. Goodman, and Job M. Nash, are held and firmly bound unto the above-named defendant, William E. Niblack, in the sum of one thousand dollars, to be paid to said William E. Niblack, to which payment, well and truly to be made, we bind ourselves jointly and severally, and our and each of our heirs, executors, and administrators jointly by these presents. Sealed with our seals, and dated this 22 day of July, 1880.

Whereas the above-named Charles Goodman hath prosecuted an appeal to the Supreme Court of the United States to reverse the order and decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana, now, therefore, the

41 condition of this obligation is that if the above-named Charles Goodman shall prosecute his said appeal to effect, and answer all costs and damages that may be adjudged or awarded against him if

he shall fail to make good his plea, then this obligation to be void; otherwise in full force.

CHARLES GOODMAN. [SEAL.]
WM. A. GOODMAN. [SEAL.]
JOB M. NASH. [SEAL.]

Sealed and delivered in presence of—
Taken and approved before me, this 24th day of July, 1880.

W. Q. GRESHAM,
Judge.

42 UNITED STATES OF AMERICA,
District of Indiana, ss:

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record (except the original bill of complaint and demurrer thereto) in the cause of Charles Goodman vs. William E. Niblack, as fully as the same appears of record and remains on file in my office.

Witness my hand and the seal of said circuit court, at Indianapolis, in said district, this 2d day of October, A. D. 1880.

[SEAL.] NOBLE C. BUTLER,
Clerk.

43 In the Supreme Court of the United States.

CHARLES GOODMAN
vs.
WILLIAM E. NIBLACK.

Comes now Charles Goodman, the appellant, by David V. Burns, his counsellor, and says that there is manifest error in the foregoing record, in this, that the court below erred in sustaining the demurrer of appellee to his amended bill of complaint, and in ordering his said amended bill to be dismissed.

Wherefore he prays that the judgment of the court below may be in all things reversed.

DAVID V. BURNS,
Of Counsel.

(Indorsement on cover:) No. 1000. Charles Goodman, appellant, vs. William E. Niblack. Indiana C. C. U. S. Filed 15th October, 1880.

O

FILED
DEC 5 1880
JAMES H. McKENNEY, CLERK

Supreme Court of the United States.

CHARLES GOODMAN, *Appellant*,
vs.
WILLIAM E. NIBLACK, *Appellee*.
No. 1000

BRIEF AND ARGUMENT FOR APPELLANT.

J. C. DENNY,
D. V. BURNS,
Of Counsel for Appellant.

Carlon & Hollenbeck, Prs., Indianapolis.

Supreme Court of the United States.

CHARLES GOODMAN, *Appellant*,
vs.
WILLIAM E. NIBLACK, *Appellee*.
No. 1000.

BRIEF AND ARGUMENT FOR APPELLANT.

I.

STATEMENT OF THE CASE.

May it please the Court: This is an appeal from the order and judgment of the Circuit Court of the United States for the district of Indiana, sustaining a demurrer to and dismissing the amended bill of complaint filed by the appellant against the appellee.

The substantial allegations of the said amended bill are these: That on the 20th day of January, 1855, the appellant recovered a judgment in the Supreme Court of the county and State of New York, against one Albert G. Sloo for the sum of $31,344.44, which is still in full

force and unpaid. That on the 3d day of February, 1860, the said Albert G. Sloo being indebted to various parties beyond his then present ability to pay, made an assignment of all of his property, rights, credits, choses in action, claims and demands, whether in law or in equity, against any and all persons whatsoever, to Benjamin H. Cheever, of Rhode Island, and James Wiles, of New York City, *in trust*, for the payment (1) of the costs and expenses of executing the trust; (2) for the payment of the plaintiff's said judgment, and then for the payment of all of his other debts and obligations in the order set forth in said deed of assignment. (This deed of assignment is made part of the bill by way of exhibit. Printed Rec. pp. 14–15.)

That theretofore, to wit, on the 20th day of April, 1847, the said Sloo entered into a contract with the government of the United States, through the Secretary of the Navy, under and pursuant to an act of Congress approved March 3, 1847, by the terms of which he agreed to build certain steamships, and in them transport the mails of the United States between the points, upon the terms and for the time stated therein. (Said contract is also made a part of the bill by way of exhibit. Printed Rec. pp. 6–9 incl.)

That the said Sloo afterwards assigned the benefits of said contract to Prosper M. Wetmore, George Law, Marshall O. Roberts and Edward Crosswell, who agreed to carry out the same on the part of the said Sloo under and pursuant to the orders and direction of the Secretary of the Navy; and, in consideration thereof, after the payment of all expenses and certain salaries therein stipulated, the net profits arising therefrom were to be divided, and one-half

thereof to be paid to the said Sloo. That to secure the performance of this new agreement the said Sloo, on the 17th day of August, 1847, assigned his said contract so made with the government, to George Law, Marshall O. Roberts and Bowes R. McIlvaine, upon the trust that they should cause said steamships to be built, registered in their own names, and, in short, fully carry out the contract of Sloo with the government, and with the said Wetmore, Law and others, and receive from the government all the moneys agreed to be paid to the said Sloo. (This contract and assignment, the agreement being a tripartite one, is also made a part of the bill by way of exhibit. Printed Rec. pp. 9–13 incl.)

That afterwards, and before the said 3d day of February, 1860, the said Roberts, and one Edwin N. Dickerson, who had been selected as one of the trustees in accordance with a provision of said contract, had become the only surviving, acting trustees under the said contract, and that they alone had the right to carry out the contract so made by Sloo with the government and collect any and all moneys due or payable from the government by reason thereof.

That at the time of the making of the said deed of assignment to the said Wiles and Cheever, to wit: February 3, 1860, the trustees of the said Sloo had an equitable claim against the government of the United States for extra services rendered pursuant to the said contract therewith, which the said Roberts and Dickerson alone had the right to prosecute and collect, one-half of the net profits of which were payable to said Sloo.

That subsequently thereto, to wit: July 14, 1870, Congress passed an act, entitled "An Act for the relief of the

trustees of Albert G. Sloo," which was approved by the President and became a law. It is in these words:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the claim of the trustees of Albert G. Sloo, for compensation for services in conveying the United States mails by steamers, direct between New York and Chagres, in addition to the regular service required under the contract made between the said Albert G. Sloo and the United States be, and the same is hereby referred to the Court of Claims; and the said court is hereby directed to examine the same, and determine and adjudge whether any, and if any, what amount, is due said trustees for said extra service, provided that the amount to be awarded by said court shall be upon the basis of the value of conveying other first-class freight of like quantity with the mails actually carried between the same points at the same time."

That there was finally allowed and paid to the said Roberts and Dickerson, as trustees of the said Sloo and others, on account of the said claim, and pursuant to the said act, the sum of one million and thirty-one thousand dollars. That the interest of the said Sloo therein were assets properly belonging to him and his estate at the time of executing the deed of assignment to Wiles and Cheever in 1860.

That after the payment of all expenses and demands, there remained in the hands of said Roberts and Dickerson the sum of one hundred and eighty-two thousand dollars, as the net profits due to said Sloo, which should have been paid to his said assignees, Wiles and Cheever, who, it is alleged, had assumed the duties of their said trust.

It is further alleged that, after the execution of the said deed of assignment, and before the allowance and payment

of said claim by the government, the said Sloo departed this life. That prior to the filing of the bill, the defendant Niblack had been duly appointed administrator *de bonis non* of his estate. That for the purpose of hindering plaintiff in the collection of his said debt, and in fraud of his rights, the said Niblack, Roberts, Dickerson, Wiles and Cheever, had confederated together and perfected an arrangement by the terms of which the said Roberts and Dickerson paid a large part of the said money belonging to the estate of the said Sloo to the said Niblack, administrator, to wit: the sum of one hundred and fifty thousand dollars, which sum, it is alleged, he had in his hands and within the jurisdiction of the court below at the time of the filing of the bill. That he accepted said fund with full notice of plaintiff's claim thereon, and that plaintiff had made due demand upon him for the payment of his said judgment out of the same, which had been refused. That there was not left in the hands of Wiles and Cheever property or money belonging to the estate of said Sloo sufficient to pay plaintiff's claim. It is further alleged that all claims and demands of every kind existing against the said Sloo at the time of the execution of the said deed of assignment had been fully paid, except the debt of plaintiff. That neither the said Cheever, Wiles, Roberts, nor Dickerson, reside within, or were within the jurisdiction of the court below at the time of the filing of the bill.

Niblack is declared against as trustee of the fund out of which the complainant's debt should be paid, but is also made a party to the bill in his representative capacity, to the end that he may protect the interest of the estate of the said Sloo therein.

To this bill, as before said, the court sustained a demurrer, and rendered judgment dissmissing the same. (See Printed Rec., p. 16.)

II.

ASSIGNMENT OF ERROR.

The appellant avers that the Circuit Court erred in sustaining the demurrer of the appellee to his amended bill of complaint, and in rendering judgment dismissing said bill and against this appellant for costs.

III.

ARGUMENT.

The theory of the appellant is, that the money in the hands of the appellee is a part of a trust fund, designated and set apart by the said Sloo in his lifetime—by the deed of assignment to Wiles and Cheever—for the payment of his said judgment. That he has the right to follow this fund into whosesoever hands it may go, with notice of the trust, and have it applied to the payment of his debt. *Milnor* v. *Metz*, 16 Pet. 221; Perry on Trusts, sec. 346. That he is entitled to satisfaction of his judgment out of any part of this fund which he may be able to reach, after the payment of all expenses incurred in the execution of the trust.

It is alleged in the bill, and admitted by the demurrer, that not only have all the expenses incurred in the execution of the trust been paid, but that all claims and demands of every kind whatsoever against the estate of said Sloo, except that of appellant, have also been fully paid and satisfied.

But two objections were urged to the bill in the argument below: *First*, That Wiles and Cheever should have been made parties defendant thereto. Even if they were necessary or proper parties, the allegations of the bill show a sufficient excuse, under the 22d Rule of Equity, as promulgated by this court, for not making them such. That they were not necessary parties, see Perry on Trusts, sec. 878. *Second*, That sec. 1 of an act of Congress, approved Feb. 26, 1853, entitled "An act to prevent frauds upon the Treasury of the United States," 10 Stat. p. 170, prohibits a recovery. Said section reads as follows:

> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled*, That all transfers and assignments hereafter made of any claim upon the United States, or any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders or other authority for receiving payment of any such claim, or any part or share thereof, shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof."

As this latter was the only question considered by the learned judge who heard the argument and ruled upon the demurrer below, we shall confine our argument exclusively to it, unless some other objection to the bill shall be hereafter made.

We maintain—

1. THAT THIS CASE DOES NOT FALL WITHIN THE LETTER OF THIS STATUTE.

By its very terms it affects only assignments and trans-

fers made after its passage. Sloo assigned his contract with the government, out of which the fund sought to be reached was realized, in 1847—six years before the passage of the act in controversy. See Printed Rec. pp. 9 to 13 incl. This assignment was not only in itself legal at the time it was made, but was twice afterwards recognized by Congress, and once by this honorable court. By Congress, by the passage of the act of July 14, 1870, for the relief of the Trustees of said Sloo, hereinbefore set out, and again in 1877, by making a specific appropriation for the payment of the claim. See Acts 2d Sess. 45 Cong., p. 7.

By this court, in the case of *Roberts et al., Trustees*, v. *The United States*, 92 U. S. R., p. 41, where the entire history of the transaction will be found carefully reviewed.

Sloo divested himself of all claims, whether legal or equitable, against the government by the assignment of his contract. The consideration he was to receive for this assignment was one-half of certain profits which might be realized from the contract assigned. These he was to receive, not from the government, but from the parties to whom he assigned his contract.

As we have seen, Congress ratified the assignment and dealt directly with the trustees, to whom the contract was assigned. All moneys payable under the contract were to be, and were, paid to them. Sloo had no further connection with or relation to the government whatever. It was under no kind of obligation to see that he realized anything whatever from his contract, no difference how large the profits might be. His right and his remedy was exclusively against the assignees of the contract, or, in this particular case, the trustees, to whom it was assigned. He

had no claim which he could prosecute against the government, either before Congress, in the Court of Claims, or before any of the Departments. Therefore he assigned none. By the deed of 1860, his trustees, Wiles and Cheever, succeeded only to his rights, which were to receive from the trustees, to whom the government-contract had been assigned, the consideration for the assignment of the same, which it was agreed at the time it was made should be estimated upon the basis of the profits realized. If, instead of this, they had agreed to pay him ten thousand dollars, or any other sum, for his interest in the contract, payable when the government had fully discharged its obligations to them, and the assignment had been recognized by the government, as in this case, is it not clear that he would not only have no claim against the government, but that the claim against the assignees of his contract was purely legal in its nature, and one which he clearly had the right to assign or dispose of in any manner that he saw fit? Is it not equally clear that the principle is the same where the amount to be paid is contingent upon the profits realized, and the performance of the contract made more secure by assigning the same to trustees instead of directly to the beneficial assignees? In other words, we insist that the fund sought to be reached in this case was realized from the contract of Sloo with Wetmore and others, and was paid as a consideration of a valid and legal assignment of his contract to Roberts and others, in trust for them, and was not realized upon any claim which Sloo had upon the government of the United States.

This statute being in derogation of the well settled principles of equity jurisprudence, which recognizes and en-

forces equitable assignments of all claims, should be strictly construed, and limited to assignments of "claims upon the United States," and not extended to claims against private individuals, because the consideration for such claims happens to be the valid and recognized assignment of a *bona fide* contract with the government.

2. EVEN IF THE CASE FALLS WITHIN THE LETTER, IT DOES NOT FALL WITHIN THE SPIRIT, OF THE ACT OF FEBRUARY 26, 1853.

In the case of *Erwin* v. *United States*, 97 U. S. R., p. 397, it is said:

"The act of Congress of February 26, 1853, to prevent frauds upon the treasury of the United States, which was the subject of consideration in the *Gillis case*, applies only to cases of voluntary assignment of demands against the government. It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs, devisees, or assignees in bankruptcy, are not within the evil at which the statute aimed; nor does the construction given by this court deny to such parties a standing in the Court of Claims."

If it be conceded that Sloo had a claim against the government which passed to his trustees, Wiles and Cheever, by virtue of the deed of assignment of 1860, we insist that under this ruling they would have had the right to have prosecuted the same before Congress, in the Court of Claims, or before the proper Department.

Judge Story, in his Com. on the Constitution, volume 2, sec. 1111, says: "It is believed that no laws ever were passed in America by the colonies or states which had the

technical denomination of 'bankrupt laws.' But insolvent laws, quite coextensive with the English bankrupt system in their operations and objects, have not been infrequent in colonial and state legislation. No distinction was ever practically or even theoretically attempted to be made between bankruptcies and insolvencies."

The power to make such assignment, while regulated by statute in most of the states, is not dependent upon them. Burrill on Assignments, (3 ed) sec. 14.

As is said by Chief Justice Marshall, in *Brashear* v. *West*, 7 Pet. 614, "The right to make it results from that absolute ownership which every man claims over that which is his own."

At the time of the execution of the deed of assignment in controversy, common law assignments were recognized and held valid by the highest court in the state of New York, where the deed was executed. *Hardmann* v. *Bowen*, 39 N. Y. 196; *Thrasher* v. *Bently*, 59 *id.* 649; see, also, *Johnson* v. *Sharp*, 31 Ohio St. 611.

Such assignments imply a trust, and contemplate the intervention of a trustee. They are clearly distinguishable from assignments directly to creditors, and bear no analogy to the simple assignment or transfer of a claim. Burrill on Assignments (3 ed), sec. 3; *Dickson* v. *Rawson et al.*, 5 Ohio St. 218.

In the former case the creditor receives title to the property by way of security, and in the latter he acquires the absolute title of the assignor. Not so, however, in cases of general assignments for the benefit of creditors. The trustee takes the absolute title, but holds the same in

trust for creditors, and must account to the assignor for the surplus, if any.

Collier, C. J., in *Walker* v. *Miller*, 11 Ala. 1067, speaking of the character of such assignments, says: "It must be considered rather as a devotion of the property conveyed to the payment of the grantor's debts, than a sale of it to trustees, or the beneficiaries under the deed. Though the debtor has parted with his estate, and thus invested the assignees with the legal title that they may dispose of it for the benefit of others, yet neither the assignees nor creditors can, in popular parlance, be said to have purchased it. The assignor has only substituted the assignees to his own rights, and made them the depository of the title which he had, and nothing more. * * * We need not, however, extend this course of reasoning, for it is perfectly clear, that, although the assignees have the legal estate, yet they have no interest apart from the trust with which they are invested by the deed."

(*a*) WE INSIST THAT THE TITLE WHICH PASSED TO THE TRUSTEES, WILES AND CHEEVER, VESTED IN THEM BY OPERATION OF LAW.

If we establish this proposition, we bring the case directly within *Erwin* v. *United States*, for it is there said: "It [the act of 1853] does not embrace cases where there has been a transfer of title by operation of law."

We have already shown that there is no difference either practically or theoretically, between bankruptcies and insolvencies. The title passes from the debtor to the trustee or assignee in the same manner, and for the same objects, in the one case as in the other. Different modes

of making the transfer may be prescribed by statute, but the underlying principle must ever remain the same.

In Smith's Leading Cases (ed. 1855), p. 75, it is said: "It is pretty clear upon the later decisions that insolvents' assignments are not within the legal presumption of fraud at all; *they are the act of the law and not of the party*, and all the world is bound to take notice of them." Citing *Wickersham* v. *Nicholson*, 14 Sergeant & Rawle, 118; *Ruby* v. *Glenn*, 5 Watts, 77.

Referring to an act of the General Assembly of the State of Pennsylvania, it is further said: "An assignment duly recorded stands upon the footing of a transfer by law, because, as the act gives the creditors the right to have the trust that is expressed in the deed executed for their benefit by the court, the whole trust becomes vested in them in equity, under the immediate administration of the court, and therefore an assignment recorded is in effect a transfer to the creditors by the act of law."

Now, we insist that in the absence of statutory prohibitions, the whole trust, under such a deed as was executed in the case at bar, becomes vested in the creditors, in equity, and that they have an unquestionable right to have that trust executed by a court of equity for their benefit. The great Chancellor Kent expressly so ruled in the case of *Nicoll* v. *Mumford*, 4 Johns. Ch. 522. Indeed, there is no more familiar subject of equity jurisdiction than the administration of trust estates created by general deeds of assignments for the benefit of creditors. Mr. Perry, in his valuable work on Trusts, sec. 585, says: "Such a trust deed for the payment of debts is favorably

regarded in equity; and it will be supported, if possible, without regard to the strict technicalities of the law."

It has been uniformly held that under general deeds of assignment conveying in general terms all the property of the debtor, that all of his property, including rights, credits, and choses in action, and real estate not specifically mentioned or described, passed to the assignee or trustee. In *Ruby* v. *Glenn*, *supra*, it was held that such an assignment superseded the statute relating to registration of deeds, and that, therefore, a sale of land by the insolvent after the assignment, but before the trustees had given bond, was invalid, although no record of the proceedings had been made in the county where the lands were. And in *Roseboom* v. *Mosher*, 2 Denio 67, Chief Justice Bronson used this language: "We will first notice the plaintiff's proceedings as an insolvent debtor. Although the assignment was as general in its terms as the law under which it was made, I see no reason to doubt that it passed all the property which the plaintiff then owned, whether in possession or expectancy. If at that time he deemed himself the owner of this property, the omission to mention it in the inventory, proves that he intended to defraud his creditors. But that wrong would not prevent the title from passing to the assignee for the benefit of creditors."

In *Milnor* v. *Metz*, 16 Pet. 221, *supra*, it was held by this court that an equitable claim against the government for services rendered before, but which was not admitted or allowed by Congress until after the assignment, passed by the deed, and that the fund should be paid to the assignee under the insolvent law, and not to the assignor. See, also, the language of Mr. Justice Clifford in *Crapo* v. *Kelly*, 16 Wal-

lace, p. 638, and Chancellor Kent in *Holmes* v. *Remsen*, 4 Johns. Ch., pp. 486–487. All of these authorities are based upon the principle that by the deed, all of the property of the debtor vests in the trustee by operation of law for the use and benefit of creditors, and that neither his acts nor purposes can be allowed to defeat their rights; but that courts of equity will so administer the estate as to secure them. See Burrill on Assignments (3 ed.), sec. 298.

It has also been held in several well considered cases that full faith will be given to such assignments, and that they will be enforced according to the laws of the state where made, though such laws are at variance with the laws in the state where enforcement is sought. *Hanford* v. *Paine*, 32 Vermont, 442; *Rice* v. *Courtis*, *id.* 460; *Levy* v. *Levy*, 78 Penn. St. 507; *Fuller* v. *Steiglitz*, 27 Ohio St. 355; *Johnson* v. *Sharp*, *supra*, Story's Conf. of Laws, secs. 403 and 423. An examination of these authorities will show that assignments by insolvents for the benefit of creditors are treated and governed by the same rules as assignments in bankruptcy.

(*b*) THE ACT OF 1853 SHOULD NOT BE SO CONSTRUED AS TO HOLD THAT CONGRESS THEREBY INTENDED TO NULLIFY OR ABROGATE THE WELL SETTLED COMMON LAW PRINCIPLES AND THE VARIOUS STATE STATUTORY PROVISIONS RELATING TO ASSIGNMENTS FOR THE BENEFIT OF CREDITORS, IF SUCH A CONSTRUCTION CAN BE AVOIDED.

Such laws and provisions are not only ancient, but are highly beneficial.

Mr. Burrill, in his work on Assignments, sec. 13, says:

"The general power to assign property in trust, in behalf and for the benefit of creditors, has always been recognized and approved in the fullest manner, both by the state and federal courts, as well as by the most eminent American jurists," and cites in support of the text, among others, the language of Story, J., in *Brown* v. *Minturn*, 2 Gall. 556–557, and *Halsey* v. *Whitney*, 4 Mason, 206–210; Kent, C., in *Dey* v. *Dunham*, 2 Johns. Ch. 182–189, and *Nicoll* v. *Mumford*, 4 Johns. Ch. 522–529; Mr. Justice Buchanan in *The State* v. *The Bank of Maryland*, 6 Gill. and Johns. 217; Mr. Justice Field in *Mayer* v. *Hellman*, 13 N. B. Reg. 440; Buckner, C., in *Robins* v. *Embry*, 1 Sm. and Marsh. Ch. 207, 258.

We respectfully invite the attention of this honorable court to what these great lights of the law have said upon this subject. With one accord they speak of general assignments as equitable and highly commendatory, because in equity a man's property belongs to his creditors to the extent of their claims against him, and in placing the same in the hands of a trustee to be administered for their benefit he does that which is agreeable to equity. Was it the intention of Congress, then, to deprive a man who might hold a claim against the United States from making a general assignment of all of his property for the payment of his debts? from doing a legal and commendatory act, viz., devoting all of his property to the payment of his debts? It is said, "A conveyance of all a debtor's property in trust, for the payment of all or any number of his creditors, is not within the statute of 13 Eliz. c. 5, or 29 Eliz. c. 5, which makes void all conveyances made to hinder, delay or defraud creditors, al-

though the assignment may operate to change the rights of a creditor, and may result in delaying him." Perry on Trusts, sec. 590.

And it was held by Mr. Justice Nelson, in *Sedgwick, assignee,* v. *Place*, 1 N. B. R. 673, and by Mr. Justice Sawyer, in *Langley* v. *Perry*, 2 *id.* 596, that a general assignment by insolvent debtors, for the benefit of creditors, untainted by fraud, was valid, and that assignees under the bankrupt act of 1867, though appointed within six months after such assignment, could not recover the property out of the hands of the trustees.

Congress, when it passed the act of 1853, had only in view the prevention of the perpetration of frauds on the treasury. This intention is gathered, not only from the title, but from the whole tenor of the act. Are trustees under a general deed of assignment more likely to resort to unjust means to secure the allowance and payment of a claim against the government than are assignees in bankruptcy, or the heirs or devisees of a claimant? We think it clear that no such distinction can be made, and that this class of cases "are not within the evil at which the statute aimed." Statutes should never be so construed as to lead to an absurdity. To so construe the act of 1853 as to prohibit a debtor who may happen to have a claim against the United States from making a general assignment for the benefit of his creditors, would lead, in our opinion, to just such a result.

The question may be properly considered in another light, viz., that the assignment to Wiles and Cheever was a mere direction to receive the money, after the same should have been allowed by the government and paid to

Roberts and Dickerson, from their hands, and apply it to the payment of the assignor's debts. This can not be properly said to be an assignment of the claim, as no interest in the claim or fund arising therefrom passed to the trustees. They do not act in their own names, but do all in the name of their assignor, not for their own benefit, but for the benefit of his creditors and at his special instance and request.

3. EVEN IF THE COURT SHALL BE OF OPINION THAT THE STATUTE APPLIES TO SUCH ASSIGNMENTS, THE APPELLEE OUGHT NOT TO BE ALLOWED TO INTERPOSE THE STATUTE AS A DEFENSE.

"Where a suit is brought by creditors to enforce the trust against an assignee who has received the property of the debtor, he can not set up fraud in making the assignment, as a defense to the suit, without showing that the fund has been recovered from him by the parties intended to be defrauded." Burrill on Assignments (3 ed.), sec. 495.

This principle is controlling here. It is admitted by the demurrer that the government paid the money to Roberts and Dickerson, and has now no further interest in the matter; that the fund was designated and set apart by the debtor for the payment of appellant's judgment; that appellee received this fund, with full notice of the trust attaching to it, and now holds the same. To apply the statute in such a case would be to convert it into an engine of fraud.

We do not understand that this court has ever given the statute a construction prejudicial to our right of recovery. The question has been five times before this court.

First, in the case of *Trist* v. *Child*, 21 Wall. 441. There the question came only incidentally before the court, and it was ruled that if an attorney who had been employed to prosecute a claim against the government for a certain *per cent.* of the amount allowed could be said to have thereby acquired a lien on the money allowed, which was denied by the court as a legal proposition, that such an agreement would amount to an assignment of that much of the claim, and was within the prohibition of the statute. Although the ruling was doubtless right, the question can hardly be said to have been before the court, for it ruled in the outset that the agreement between the attorney and claimant was a personal one, and that the remedy was at law and not in equity, and thereupon ordered the bill dismissed.

Second, in the *Gillis case*, 95 U. S. R. 407. This was a suit at law, brought in the Court of Claims by an assignee of a claim in his own name, against the United States. The court held that there was no law of Congress authorizing the assignment of claims against the United States, and that at common law an assignee can not prosecute an action at law in his own name. On the contrary, it was said that the act of February 26, 1853, prohibited such assignments, and applied to claims against the government when sought to be realized through the aid of the Court of Claims, as well as when asserted before the Treasury Department. The court expressly limited its decision to this point by the use of the following language: "If we are right in the opinion we have expressed, that claims against the United States can not be assigned so as to enable the assignee to bring suit in his own name in the Court of Claims, it is enough for the present case." (p. 417.)

Third, in *Erwin* v. *United States*, *supra*. There, Erwin, while holding an unallowed cotton claim against the government, was adjudicated a bankrupt. He afterwards attempted to prosecute his claim against the government for his own use, claiming that it did not pass to his assignee, such an assignment being prohibited by the act of 1853. But the court held, using the language before quoted, that the case was not within the meaning of the statute.

Fifth, in the case of *McKnight* v. *United States*, 98 U. S. R. 179, which was so clearly within both the letter and spirit of the statute as to require no further notice.

The fourth case, and the one most relied on by appellee, is *Spofford* v. *Kirk*, 97 U. S. R. 474. The facts were that Kirk employed attorneys to collect a claim against the United States. Before the allowance, he drew an order in favor of Wharton for $1,200, directed to his attorneys, requesting them to pay the same out of the moneys coming to him, when received by them. This order was accepted by the attorneys, and was afterwards by Wharton indorsed to Spofford, the appellant. Kirk, after the issue of the treasury warrant, having refused to admit the validity of the order, Spofford filed his bill to enforce specific performance, and to enjoin the attorneys from surrendering the warrant to Kirk.

The court held that the order and acceptance amounted to an equitable assignment, *pro tanto*, of the claim of the drawer against the government, and was within the prohibition of the act under consideration.

With the utmost deference to this learned and justly eminent tribunal, we think that the plaintiff should have

recovered, for the reason that it was not the intention of the parties to assign a direct interest in the claim. The plaintiff simply drew an order which was not to operate upon the claim until after the money was paid into the hands of his attorneys, and the United States was not and could not be in any way affected thereby. If such be the case, it can hardly be said that Congress intended to prohibit such transactions. Did we feel that this case is a bar to our recovery, we should earnestly ask the court to reconsider it. But we do not. The principle involved is entirely different. Here the assignment not only took effect by operation of law, but the trustee of an express trust, holds, not a warrant upon the treasury, for the money which must needs be assigned in part before any one but the claimant could draw the same, but holds the money itself, which was specially devoted by the deceased debtor to the payment of the plaintiff's debt. In no way can the government be affected, where the assignment is made to operate only on the fund, after the same has been paid into the hands of the trustee. Nor can we think that Congress intended to affect such transfers. To so construe the act is to extend its operations to objects other than that sought to be obtained, viz., the prevention of frauds upon the treasury.

Courts do not usually construe statutes so as to extend their provisions beyond the objects sought to be obtained, even though a literal interpretation may seem to require it.

September 4, 1841, Congress passed an act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," which, after prescribing the manner in which the proof of settlement and

improvement shall be made before the land is settled, has this proviso: "*And all assignments and transfers of the right hereby secured prior to the issuing of the patent shall be null and void.*"

Under and by virtue of this act, one Fraily, on the 3d day of September, 1857, entered a quarter section of land, and on the same day, and "*prior to the issuing of the patent,*" conveyed the same by a warranty deed. Held by this court, *Myers* v. *Croft*, 13 Wall. 291, that this conveyance was valid and passed the title, the court saying: "The object of Congress being attained when the pre-emptor went, with clean hands, to the land office and proved up his right and paid the government for his land. Restriction upon the power of alienation after this would injure the pre emptor, and could serve no important purpose of public policy." This language, we think, is peculiarly applicable to the case at bar. The government is fully protected by refusing a sanction of any and all assignments and transfers whilst the claim is still pending and the money in the treasury, but it would not only injure the claimant, but no important purpose of public policy can be secured by holding that Congress intended to forbid his making a general assignment, governed by the insolvent laws, the deed to operate only upon the claim after the same shall have been allowed and paid.

Merrill v. *English*, 28 Vermont, 150; *Edwards* v. *Mitchell*, 1 Gray, 239; *Bigelow* v. *Baldwin*, *id.* 245; *Reamey* v. *Vaughen*, 50 Mo. 287, and *Pearsall* v. *Chapin*, 44 Penn. St. 9, are all instructive and well considered cases upon this question.

In the *Missouri* case the court say: "It is perhaps un-

fortunate that we are not supplied with a term of more precision than the word 'void,' a word more often used to point out what may be avoided by those interested in doing so, than to indicate an absolute nullity. Many things are called void which are not absolutely so, and as to mankind generally are treated as valid. They can only be called *relatively void.*"

In other words, the thing is void and inoperative as to the person against whom it may operate injuriously, but valid as to all others.

In conclusion we maintain—

1. That Sloo assigned all of his interest in the claim against the government prior to the passage of the act of 1853.

2. That if he still retained an interest in the claim against the government until 1860, the assignment to Wiles and Cheever being a general one, and for the benefit of all of his creditors, was not within the prohibition of the statute.

3. That appellee being trustee of an express trust, can not take advantage of the statute whilst admitting that he has the funds in his hands.

4. That the act of 1853 has no application to cases betwen private individuals after the money has been fully paid over, and the government ceases to have any interest therein. Especially is this so in cases where there was no intent to assign an interest in the claim, but only a general direction to receive the money when the government should be ready to pay the same, and apply the same to the payment of the debts of the claimant.

We appeal with confidence to the conscience of the court. The appellant's debt is a meritorious one, and was reduced to judgment twenty-five years ago. The decedent being in straightened circumstances, he has waited patiently until the estate has become wealthy. So strongly did Col. Sloo feel this obligation that he directed that it should be first paid, next after paying the expenses of the trust. Appellee, by his demurrer, admits the judgment; admits that he has the trust fund out of which the decedent directed it should be paid; admits that he conspired with Roberts and Dickerson, and Wiles and Cheever, and got the former trustees to pay the money to him instead of to the trustees appointed by the deed of 1860, for the purpose of defrauding the appellant out of his debt. If Col. Sloo could rise up in his grave he would say to the appellee: *I owe that debt; you have the fund which I devoted to its payment; pay it.*

Appellant has no other remedy. The highest Court in the State, where Sloo's estate is being administered, has decided that the statute of limitation bars his right of recovery against the estate. *Niblack, administrator*, v. *Goodman*, 67 Ind. 174.

In the name of both law and justice, we ask a reversal.

J. C. DENNY,
D. V. BURNS,
Of Counsel for Appellant.

Supreme Court of the United States.

CHARLES GOODMAN, *Appellant*,
vs.
WILLIAM E. NIBLACK, *Appellee*.
No. 1000.

REPLY TO ARGUMENT OF APPELLEE.

Counsel for appellee entirely ignores our first proposition, viz: that Sloo assigned all the claim he had upon the United States, prior to the passage of the Act of 1853.

He virtually admits our second proposition. He says: "That the provisions of the act do not apply to the transfer of claims by operation of law, such as the devolution of the interest in a claim on [to] an executor or administrator, an assignee in bankruptcy, *or even an assignee under*

a State insolvent law, we do not dispute." He defines a transfer by "operation of law," thus: "A person taking title by operation of law is said to be an assignee, not in fact, but in law; that is, he succeeds to the rights of some one else."

We accept this definition, as it is not only one of the best we have seen, but is peculiarly applicable to the facts of this case. Wiles and Cheever were not assignees in fact of any claim or property held or owned by Sloo. They paid no consideration whatever for the assignment, nor did they become the owners, either legally or equitably, of of any of the property or claims assigned. They became simply vested with Sloo's title for the purpose of collecting the assets and applying them to the payment of his debts. In other words, they succeeded "to the right of some one else."

But it is objected that this assignment was not made pursuant to any statute. This, we insist, makes no difference in principle. We have shown, in our former argument, that such assignments, whilst in many States regulated by, do not depend upon, statutes for their validity, and that at the time the deed of assignment now under consideration was executed, there was no statute in New York regulating the matter, and that the Court of Appeals of that State uniformly held common law assignments, such as was here made, to be valid.

But it is said that Sloo undertook to control the trust by directing the order in which the debts should be paid. This does not change the nature of the assignment. If A directs by his will that legacies shall be paid in a certain

order, the executor of his estate holds title by operation of law to the same extent that an administrator would in case the party had died intestate.

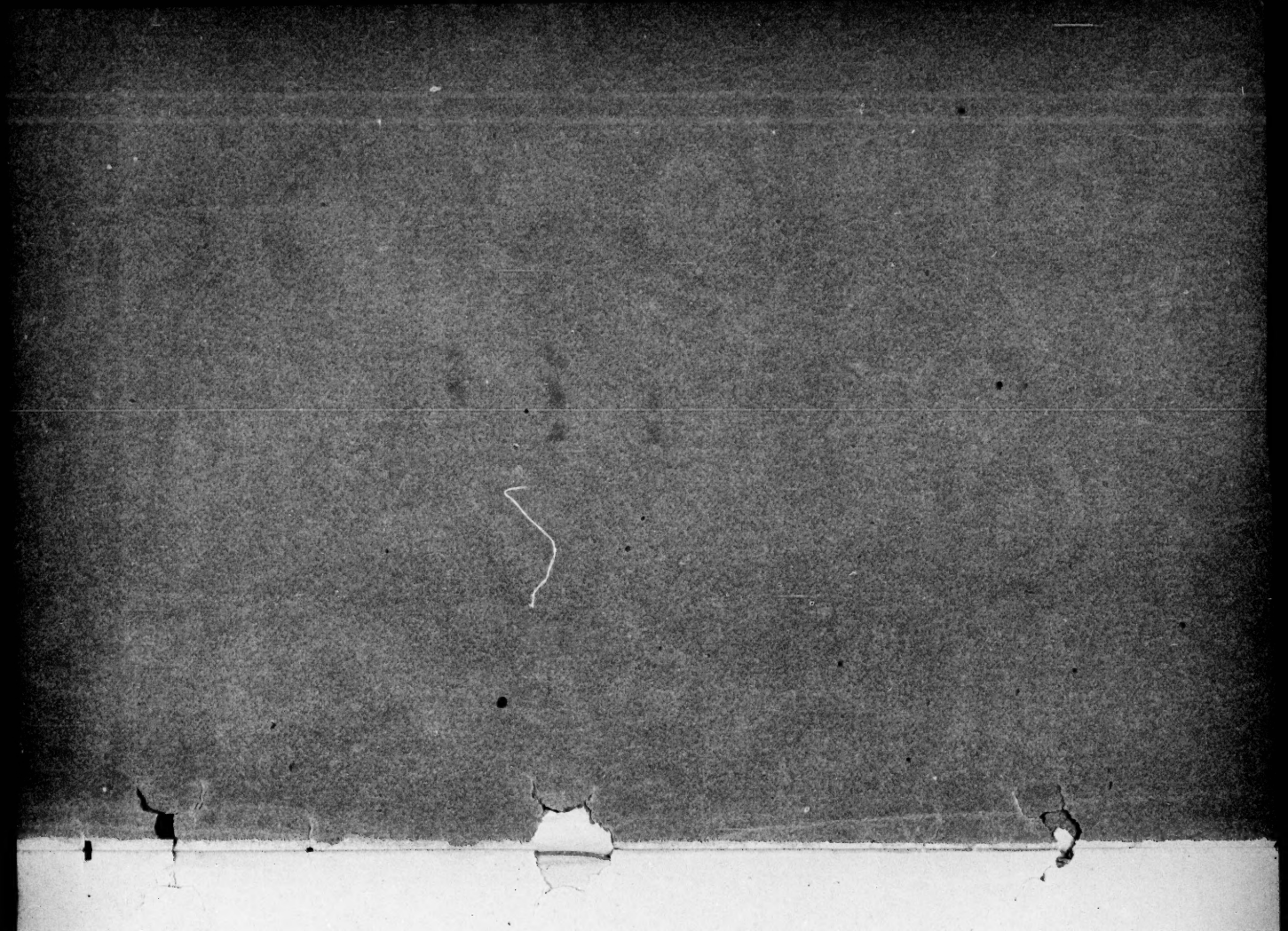
The suggestion that if such assignments be recognized there is danger of the same claim being twice paid will not bear the light of examination. However this may be as to ordinary claims, in this case the contract out of which the claim grew was assigned to trustees by and with the consent of the Government, acting through the Secretary of the Navy. This assignment, as we have seen, was recognized by Congress and by this Honorable Court. No one then, but those trustees, could receipt for the money, so that there was no possible danger of the claims being twice paid.

Counsel says: "The prevention of frauds upon the Treasury, then, may be considered to be the object of the act." In this, we think he is right. To hold that Congress intended thereby to prevent a man who holds a claim against the United States, from making a general assignment of all of his property to trustees for the benefit of his creditors, is to attribute to it an arbitrary interference with the rights of the citizen and the laws of the several States, which it would not be justified in making. Such an intention ought not to be attributed when there is a reasonable way of escaping such a conclusion.

We will not follow counsel in the discussion of the proposition that the necessary parties are not before the Court to enable it to make the proper decree. This is an after consideration. It was the understanding of all parties, Mr. Justice Harlan included, that we should come to

this Court for the simple purpose of having the question as to whether the act of 1853 applied to this case determined. All other questions can be easily settled in the Court below. Even if this were not so, the rule is well settled that an intermediate trustee need not be made a party except under peculiar circumstances. Perry on Trusts, sec. 878. There is certainly enough in the bill to call for answer.

J. C. DENNY,
D. V. BURNS,
Of Counsel for Appellant.



SUPREME COURT, U.S.
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Supreme Court of the United States.

Charles Goodman, Appellant,
vs.
William E. Niblack, Appellee. } *No.* 1000.

Appellee's Brief.

F. W. VIEHE,
Of Counsel for Appellee.

Supreme Court of the United States.

Charles Goodman, Appellant,
vs
William E. Niblack, Appellee.
} No. 1000.

Appellee's Brief.

The appellee is not satisfied with the statement of the case made by appellant, and, therefore, presents his own.

On the 20th of April, 1847, the Secretary of the Navy, on behalf of the United States, entered into a contract with Albert G. Sloo. By this contract Sloo agreed, for payments to be made by the government, to establish a line of steam ships between New York, New Orleans, Chagres, and other points, and on the ships to carry the mail of the United States. [See copy of contract, print. record p. 6.]

On the 17th of August, 1847, a contract was entered into by Sloo, of the first part, Wetmore, Law, Roberts and Crosswell, of the second part, and the said Law and Roberts, and one McIlvaine of the third part. By this contract, and by an assignment therein referred to, the parties of the third part became the owners of the contract with the government, but their ownership was that of trustees for the parties of the first and second part. The parties of the second part agreed to construct the steam ships necessary for the service required to be performed under the contract with the government. The trust reposed in the parties of the third part was that they should cause the steam ships, as they should, from time to time be built, to be registered in their own names; that they should have the sole management and direction thereof; and also, the management and direction of their employment, subject to the provisions of the contract with the government; that they should generally, in their own names, carry on the business undertaken

subject to Sloo's right of "nominating the commanders of said ships, and, by and with the consent of said trustees, of appointing the same;" that the trustees should quarter yearly render an account of their receipts and expenditures to each of the other contracting parties; that the net proceeds, at the expiration of each quarter, should be disposed of by the trustees, by paying to each of the other parties the one-half of $12,500, and by applying the residue to the reimbursement of the parties of the second part for their advances in building the ships, &c.; and after the parties of the second part should have been fully reimbursed, that then, the net earnings should be paid one-half to Sloo and the other half to the parties of the second part; that the steam ships should also be held in trust for the parties of the first and second part. The contract makes provision for the appointment of successors in case any of the trustees should die, resign, or become incapable of acting. [Copy of contract, print. record, p. 9.]

Marshal O. Roberts, one of the trustees named in the above instrument, and E. N. Dickerson, who had been appointed in pursuance of its provisions, had a claim against the government at the time the deed of assignment hereafter referred to, was made, that is February 3, 1860. Sloo was entitled to one-half of this claim against the United States, and Wetmore, Law, Roberts, and Crosswell, were entitled to the other half.

By an "act for the relief of the trustees of Albert G. Sloo," approved July 14, 1870, the claim of these trustees for compensation for services in carrying the mails, in "addition to the regular service required under the contract made between the said Albert G. Sloo and the United States," was referred to the court of claims. The court was authorized to ascertain what sum, if any, was due the trustees for "said extra service." The court determined the amount due the trustees to be $1,031,000. In the act of appropriation providing for deficiencies, approved ————, 1877, referred to in the bill, Congress makes appropriations for a variety of purposes, among which is one "for the payment of judgments rendered by the court of claims, to-wit: to * * * Marshal O. Roberts and E. N. Dickerson, surviving trustees of Albert G. Sloo six hundred and thirty-three thousand and seventy-eight dollars and forty-eight cents," This sum was afterwards paid by the United States to the trustees, and of it they paid to the defendant, who is administrator *de bonis non* of Albert G. Sloo's estate —one hundred and fifty thousand dollars.

Before this claim was allowed by the government and after the passage of the act of Congress which declares void the assignment of claims upon the United States before their allowance, &c., that is on the third day of February, 1860, Albert G. Sloo made an assignment for the benefit of his creditors. In this assignment Sloo's interest in the claim is not mentioned; but it professes to transfer to the assignees,

Cheever and Wiles, all his "claims and demands, debts, dues, obligations, rights and choses in action." It provides that, after the payment of all expenses, &c., of the trust, a certain judgment in favor of the complainant and against Sloo should be paid, and that then other debts should be paid. A copy of the assignment may be found in the printed record, page 14.

The bill alleges that all demands against the estate of Sloo, except the complainant's judgment, have been paid; that all expenses incident to the assignment have either been paid, or the assignees have funds sufficient to pay them; that defendant, when he received the money had notice of the assignment; that payment of the judgment from the money so received has been demanded of the defendant but that he refused to pay.

Roberts, Dickerson, Cheever, and Wiles, are not residents of the state of Indiana, and are not subject to the jurisdiction of the court below.

Obviously, the question arises whether, by the assignment to Cheever and Wiles, they acquired the interest of Sloo in the claim against the United States, which had not then been allowed, but was, afterwards, by the court of claims, allowed in favor of Roberts and Dickerson as his trustees. That Sloo had an interest in the claim to the extent of one-half, after certain deductions, is not only evident, but is alleged in the bill. Whatever beneficial interest he had in the matter was his equitable ownership of one-half of the claim against the United States after the trust should be satisfied. He had, at the time of the assignment to Cheever and Wiles, no demand connected with the claim against any one except the United States. The substance of the arrangement of the parties to the contract of August 17, 1847, was that, after the payment of the debts and liabilities of the trust created by the instruments of that date, all the property of the trust, including any demand against the government, should belong, one-half to Sloo and the other half to Wetmore, Law, Roberts, and Crosswell; Sloo and these parties were entitled to the money due from the government after the liabilities of the trust were satisfied.

This brings us to the question whether such an interest as Sloo had in the claim against the United States was, for ordinary purposes, assignable, notwithstanding the act of February 26, 1853, declaring void "*all* transfers and assignments * * * of any claim upon the United States, or any part or share thereof, or *interest* therein;" and then, if such claim is not assignable for ordinary purposes, whether the purpose of the assignment in this case exempts it from the operation of the act, although it be within its words.

This act (10 statutes at large 170) is entitled "an act to prevent frauds upon the Treasury of the United States." The prevention of frauds upon the Treasury, then, may be considered to be the object of the act. This object was to be accomplished by first declaring void all assignments "of any claim upon the United States, or any part or share thereof, or *interest* therein," made before the allowance of such claim, &c., and by declaring void all the means which might answer the purposes of an assignment, such as powers of attorney, orders, &c.

The second and third sections declare guilty of a misdemeanor any person who, being in the employ of the government, should act as agent or attorney for prosecuting any claim against the United States; or should, otherwise than in the discharge of his official duties, assist in the prosecution and support of such claim; or should receive any share of or interest in, such claim, with intent to assist, or in consideration of having aided or assisted, in the prosecution of such claim. The object of the fourth and fifth sections is to prevent the destruction and abstraction of records and papers of courts of justice and of public offices; that of the sixth section is the prevention of bribery and improper influences of certain public officers.

When the provision declaring void assignments is read in the light of subsequent sections it would seem that the purpose of Congress, in declaring void assignments of claims before their allowance, was to prevent the acquisition of a beneficial interest in claims against the United States, because, by permitting this to be done, combinations might be formed, through which improper influences could be brought to bear on officials who had duties to discharge in connection with the investigation or allowance of the claims. This court, in speaking of this act, in Spofford v. Kirk, 7 Otto, 484, after alluding to the danger of the same claim being paid twice, if assignments were allowed, says "Another and greater danger was the possible combination of interests and influences in the prosecution of claims which might have no real foundation, of which the present case affords an illustration. Within our knowledge there have been claims against the government, interests in which have been assigned to numerous persons, and thus an influence in support of the claims has been brought into being which would not have existed if assignments had been made impossible." The language of the first section of this act is so broad and comprehensive in declaring "absolutely null and void" all assignments made of "any claim upon the United States, or any part or share thereof, or interest therein," before the allowance of the claim, that there seems to be nothing left for construction; and this court has, as far as we are informed, so held in every case in which the question was involved.

That the provisions of the act do not apply to the transfer of claims by operation of law, such as the devolution of the interest in a claim

on an executor or administrator, an assignee in bankruptcy, or even an assignee under a State insolvent law, we do not dispute. A person taking title by operation of law is said to be an assignee, not in fact but in law; that is, he succeeds to the right of some one else; but, in such cases it is not said that "transfers and assignments" have been "made of any claim * * * or any part or share thereof or interest therein." When Congress uses such words it is apparent that its attention was directed to transfers or assignments depending on the volition and acts of the owner of the claim. When, by operation of law for the benefit of others, the title of property devolves on a person such as an executor, administrator, assignee in bankruptcy or insolvency, the law defines the rights of the beneficiaries, but, in the assignment to Cheever and Wiles, Sloo was not controlled by any statute; he created a trust according to his own views; he made provision for whom he pleased. The assignment is within the mischief, intended to be prohibited. If the assignment vested in Cheever and Wiles the interest of Sloo in the claim against the United States, then, Sloo, if his property was not sufficient for the payment of his debts, could have given a preference to the complainant and other creditors and thereby induced them to use their influence to have the claim allowed. If the claim was sufficient to pay the preferred debts and no more, and this was all the property, the assignment was substantially a transfer of Sloo's interest in the claim to Cheever and Wiles in payment of the preferred debts. If an assignment is exempted from the operation of the act for the reason that it is for the benefit of creditors, the assignor, if his property is not sufficient to pay all his debts, has an inducement to give a preference to men of influence, because, by the exertion of this, they might get the claim paid and thereby obtain payment of their debts and relieve him of his liabilities. If a debtor make an assignment of all his property for the benefit of his creditors, and it all consists of claims against the United States and exceeds his debts, the assignment being valid, the surplus would be held in trust for him. He might dispose of this surplus for any purpose, even for the purpose of forming a "combination of interests and influeuces in the prosecution of claims." The danger apprehended by Congress, and referred to in Spofford v. Kirk, of the same claim being paid twice, and the necessity of investigating the validity of assignments, apply as well when the transfer is for the benefit of creditors as in any other cases.

The question, whether the interest of Sloo in the claim against the United States vested in Cheever and Wiles, is the most important one in this case; but appellee desires to present to the court other views

showing additional reasons why the ruling of the court below is right and why the decree should be affirmed.

The proper remedy of the complainant, if Cheever and Wiles become possessed of Sloo's interest in the claim, is by enforcing the execution of the trust. The complainant proceeds on the theory that Roberts and Dickerson had money which they held in trust for *him;* that the defendant, having received this money, is chargeable as trustee, and, as such, he may be required to account. If the complainant could not have proceeded against Roberts and Dickerson, then, it seems to us, he cannot sustain his bill against this defendant. The defendant, if liable at all, is so only because he occupies the place of Roberts and Dickerson. It the interest of Sloo in the claim passed by the assignment to Cheever and Wiles, as trustees for his creditors, then Roberts and Dickerson, held the money in trust for the assignees; if so, they have a right to the money and to administer the trust, and, both the complainant and the creditors have a right to require an accounting and to be paid in due course of administration. If the complainant can sustain this bill by avering that Cheever and Wiles have funds sufficient to pay all demands which have a preference over his, then any other creditor may sue by adding to this averment the allegation that this defendant has, of the money received of Roberts and Dickerson, sufficient to pay all claims having a preference over his debt, and to pay this also; and such suit may be brought against any one having assets belonging to the trust created by Sloo by the assignment to Cheever and Wiles.

Were the necessary parties before the court to enable it properly to make a decree in favor of the plaintiff? A court of equity will not make a decree which a party, against whom it operates, cannot safely obey. A provision of an act of Congress, as well as a rule of practice prescribed by this court, authorizes the courts of the United States to entertain jurisdiction in cases where there are several defendants, "any one or more of whom shall not be inhabitants of, or found within, the district;" but that, "the judgment or decree shall not conclude or preclude other parties." We take it to be settled that this provision applies only to cases in which the court can proceed to a decree that will be just between the parties before it; that can safely be performed by those on whom it operates, and cannot impair the rights of those not before it.

Hagan vs. Walker, 14 H, 29.
Northern Ind. R. R. Co. vs. Mich. Cent. R. R. Co., 15 H. 233.
Shields vs. Barrow, 17 H, 130.
Cairon vs. Millanden, 19 H, 113.
Barney vs. Baltimore City, 6 Wall, 281.

In this case the trustees, for the benefit of the creditors, have the

right to all the assets which passed by the assignment made by Sloo; they are not parties, and a decree made in this case cannot affect them. The pleader does not aver the *facts* which constitute collusion, but his *conclusion* is that money was paid to Cheever and Wiles "for the purpose of procuring them, the said Wiles and Cheever, to release and relinquish their right to receive the said money, as such trustees, under said deed of assignment, and in fraud of complainant's rights, for the purpose of cheating and defrauding the complainant." No *facts* are charged that tend to show that Cheever and Wiles are not proceeding with the execution of the trust reposed in them. The money permitted to pass into the hands of the defendant, who is administrator of Sloo's estate, and, as such, is entitled to all that remains after the trust is satisfied, may have been no more than he was entitled to. If they retained means sufficient to satisfy all demands against them, it would not be equitable to hold the defendant liable to the trust: the funds in their hands should be exhausted before the defendant, who, as representative of Sloo is entitled to the surplus, is required to account to the plaintiff. It is not alleged that they have not means to pay the complainant's demand; not even that they have demanded payment of them.

According to the terms of the deed of assignment, the property of the trust, before the complainant is entitled to be paid, is liable for the expenses of the trust, and for a reasonable and proper compensation to the assignees for their services. The bill alleges that these have either been satisfied, or, that there are funds sufficient in the hands of Cheever and Wiles, "derived from the property and choses in action, assigned to them, to fully pay and satisfy the same." In order to determine whether the assignees have funds sufficient to defray expenses, &c., and whether it is necessary to appropriate the money received by defendant to the purposes of the trust, an account of the means realized, and of the expenses incurred, and of services rendered, must be taken, which account, if taken at all, in this case, must be taken without Cheever and Wiles, whose accounts are to be settled, being before the court.

Appellant's counsel conclude their argument by referring to Niblack v. Goodman, 67 Ind., 174. They say "appellant has no other remedy." The case referred to was reversed, but the decision is not final; even if it were, we might say that the very object of a suit is to leave one of the parties so that he has no remedy; this court has, no doubt, frequently left parties in that condition. We suppose this court will pass on the questions presented by the record before it, without regard to the consequences of the decision of another court on questions which have no bearing on the matters now involved.

For these reasons we claim that the decree ought to be affirmed.

F. W. VIEHE,
Of counsel for appellee.